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86-14

Supreme Court, U.S.
FILED
JUL 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

VERNON C. BUCKLEY,
Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee.

On Appeal from the
Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

Vernon C. Buckley
309 Georgian Drive
Cinnaminson, N.J. 08077

June 30, 1986

76pp

QUESTION PRESENTED

1. Constitutionality of the Reciprocal Personal Income Tax agreement between the Commonwealth of Pennsylvania and the State of New Jersey.

2. That all New Jersey residents be treated in an equal manner under this agreement.

3. This agreement violates the 14th Amendment to the United States Constitution and also Article One Section Ten of the United States Constitution.

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

VERNON C. BUCKLEY,
Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee.

On Appeal from the
Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

Vernon C. Buckley, the appellant, appeals from the final judgment of the Supreme Court of Pennsylvania, dated April 14, 1986 holding that the Reciprocal Personal Income Tax agreement between the Commonwealth of Pennsylvania and the state of New Jersey is constitutional and that my rights under the 14th Amendment to the United States Constitution have not been violated and that the state of New Jersey and the Commonwealth of Pennsylvania have not violated Article One Section Ten of the United States Constitution.

OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania appears in the Appendix * 81 Pa. Comm W. 530, 475 A.2d 160 (1984). In addition I am including in Appendix Dissenting Opinion * Pa Comm W 475 A.2d 160 (1984).

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Pennsylvania entered against the appellant on April 14, 1986. This appeal is being docketed in this court within 90 days from the date the opinion filed.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. 14th Amendment to the United States Constitution. This quaranties equal protection of the law.

2. Article One Section Ten of the United States Constitution. No state without the consent of Congress shall enter in any agreement with another state.

RAISING THE FEDERAL QUESTIONS

The question of the constitutionality of the Personal Income Tax agreement between the state of Pennsylvania and New Jersey was raised at every level of appeal. The Commonwealth Court and the Supreme Court of Pennsylvania dismissed out of hand the question of the 14th Amendment and Article One Section Ten of the Constitution.

STATEMENT OF CASE

I am a resident of the State of New Jersey. I work in the City of Philadelphia and am self-employed. I have filed a Pennsylvania State income tax return and paid the tax due, from the time the law was first passed till the Reciprocal Income Tax agreement between the two states was approved.

In December, 1977 a Reciprocal Personal Income Tax agreement was made between the Commonwealth of Pennsylvania and the State of New Jersey. The purpose of this agreement was "To relieve New Jersey residents from liability for Pennsylvania Personal Income Tax and the requirement for filing Pennsylvania tax returns."

On April 17, 1978, I sent a statement of Non-Residence in Pennsylvania to the Pennsylvania Department of Revenue, Personal Income Tax Bureau. The state of

Pennsylvania stated that because I was self-employed I must file and pay the Pennsylvania Income Tax, while New Jersey residents working in Pennsylvania who are not self-employed do not have to file and pay this tax.

The following appeals were made:

1. Bureau of Revenue August 12, 1980. It is hereby ordered that the tax deficiency be sustained.

2. Determination by Board of Finance and Revenue - January 16, 1981. Petition for review was refused and action by Department of Revenue Sustained.

3. Appeal to Commonwealth Court of Pennsylvania April 13, 1984. Order of Bureau of Revenue was affirmed.

4. Supreme Court of Pennsylvania April 14, 1986. The Order of the Commonwealth Court is affirmed.

THE QUESTIONS ARE SUBSTANTIAL

I am not an attorney and the logic I use in coming to a conclusion may not be the same as is taught in law school. The question is to treat all New Jersey residents in an equal manner. For nine years the State of Pennsylvania has been telling me they do not have to do this. I think they are wrong. The 14th amendment to the Constitution guaranties equal protection of the law. To me as a layman this means that all citizens should be treated the same. If they are treated differently there should be a major or catastrophic reason why this is so.

The State of Pennsylvania apparently does not agree with the 14th Amendment.

Why should a New Jersey resident who is self-employed be treated any differently from a New Jersey resident who works for someone? The State of Pennsylvania told the Pennsylvania Supreme Court that this was done to make collecting of the tax easier. To me this is not a valid reason. If this is a valid reason for disregarding the 14th Amendment then we as a nation are in trouble.

I want no favors. The only thing I want the United States Supreme Court to do is tell Pennsylvania to treat all New Jersey Residents working in Pennsylvania the same.

I am not saying Pennsylvania does not have the right to enter into an agreement with another state. If they do enter an agreement it should be in a lawful manner and treat all non residents the same and following the requirements as set down in our Constitution.

Article One Section Ten of the United States Constitution.

I brought this up before all the courts in Pennsylvania. They dismissed this argument out of hand. It was said that the United States Supreme Court had already decided this question in the past. This may be true; but what may have been considered correct 50 years ago may not be valid today. The court also could have made a mistake fifty years ago. I have been brought up to believe that the United States Constitution was the supreme law of the land and that it could only be

changed by amendment. I can find no amendment removing Article One Section Ten from our Constitution. Thus, in my mind this should still be considered the law. This article states "No state shall without the consent of Congress enter in any agreement with another state." Congress has not given its consent to this agreement. Under the Constitutuion this agreement is not valid.

It has been argued that the men who drafted the Constitution did not intend this article to be used in cases like this; but I don't think so. If you remember the history of the 13 original states they were like 13 nations each jealous of its own rights. Its citizens had a strong loyality to their own state. This was true even at the time of our Civil War when Robert E. Lee put loyalty to Virginia above that of the Federal Government. The drafters of the Constitution may have realized this and tried to protect the rights of citizens which had dealings with other than their own state.

The mechanism to have an agreement approved is there. The fact that Pennsylvania and New Jersey did not use it does not mean it is not valid. The wording of the article is so straight and forward that I can not see how any other interpretation can be made. A state must get the consent of Congress to enter into an agreement with another state.

If this section is not a valid part of the Constitution let us repeal it; but as long as it is the law it should be enforced.

CONCLUSION

I feel that every citizen of our country has a right to appeal to the United States Supreme Court and to have that appeal heard when he feels lower courts have not adhered to the United States Constitution.

I strongly feel that the State of Pennsylvania has ignored the Constitution of the United States in this case.

As a non resident of Pennsylvania I can not help but think that maybe the courts of Pennsylvania are more likely to rule against a non resident than against the position their own state takes. I am sure the United States Supreme Court would be completely unbiased.

I have only one request and that is that the United States Supreme Court direct the state of Pennsylvania to treat me no differently than any other resident of the state of New Jersey.

For these reasons, this court should hear this appeal.

Respectfully submitted

Vernon C. Buckley.

Vernon C. Buckley
309 Georgian Drive
Cinnaminson, New Jersey 08077

June 30, 1986

APPENDIX

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 35 M.D. Appeal Docket, 1984
Appellee,	:	Appeal from the Order of the
v.	:	Commonwealth Court at Docket No. 265 C.D. 1981.
VERNON C. BUCKLEY,	:	81 Pa. Commw. 530, 475 A.2d 160
Appellant	:	(1984).
	:	ARGUED: May 15, 1985

OPINION

JUSTICE ZAPPALA FILED: April 14, 1986

This is a direct appeal from an order of the Commonwealth Court, our jurisdiction being derived from 42 Pa. C.S. §723(b). Commonwealth Court affirmed the order of the Board of Finance and Revenue, sustaining the Department of Revenue's assessment filed against the Appellant, Vernon C. Buckley, for failure to pay personal income tax. At

issue is the constitutionality of the 1978 Reciprocal Personal Income Tax Agreement between Pennsylvania and New Jersey insofar as it distinguishes between "compensation" and "net profits".

The Appellant is a resident of New Jersey who practices his profession as an osteopathic physician and surgeon from an office in Philadelphia. Between 1971 and 1977, the Appellant paid the Pennsylvania personal income tax. In 1978, he filed a personal income tax return reporting a net profit of $33,798.91 but asserting no tax liability. Appellant argued that pursuant to the Reciprocal Personal Income Tax Agreement between Pennsylvania and New Jersey he, as a non-resident, was exempt from the tax. Successive petitions for review to the Department of Revenue

Board of Appeals and the Board of Finance and Review resulted in the sustaining of the assessment for a tax deficiency.

In December of 1976, Pennsylvania and New Jersey entered into an agreement which became effective in 1978. The agreement provides that persons who reside in one state and are employed in the other may file certificates of non-residence with their employers and thereby exempt themselves from filing returns and paying personal income taxes on compensation paid in the state where they are employed. Employers receiving such certificates of non-residence are obligated to withhold income tax at the rate appropriate for the residence state of the employees and to remit the taxes so collected to that state. The agreement further provides that nothing in it

"shall be interpreted to exempt a resident of Pennsylvania or New Jersey who has taxable income in the Commonwealth or State of non-residence other than in the form of compensation from liability for payment of income tax or filing an income tax return with regard to such other taxable income."

Because of this latter provision, the Appellant is clearly not entitled to exemption from Pennsylvania's personal income tax as a non-resident; the entire $33,798.91 of his income earned in Pennsylvania is "net profits" and not "compensation." For purposes of the personal income tax imposed under the Tax Reform Code of 1971, "compensation" includes "[a]ll salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration

received for services rendered, whether directly or through an agent and whether in case or in property... ." 72 P.S. §7303(a)(1). "Net profits" are distinguished as being "[t]he net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct thereof determined either on a cash or accrual basis in accordance with accepted accounting principles and practices, but without deduction of taxes based on income." 72 P.S. §7303(a)(2).

In response to the conclusion that the Agreement does not permit a non-residence exemption for net profits, the Appellant challenges the Agreement as violative of the equal protection clause, Amendment XIV, Section 1, of the United States Constitution and the uniformity clause of the Pennsylvania

Constitution, Article VIII, Section I.[1]

It has often been stated that uniformity and equal protection clause challenges of taxing legislation, like challenges to the exercise of the police power where the legislature also enjoys broad discretion, are subject to review according to the "rational basis" standard. See Leonard v. Thornburgh, ___ Pa. ___, 489 A.2d 1349 (1985) and cases cited therein. See also Snider v. Thornburgh, 496 Pa. 159, 436 A.2d 593 (1981). The classification at issue is analyzed "to determine whether it is reasonable, not arbitrary, and rests

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[1]Appellant also argues that the Agreement violates the Compact Clause, Article I, Section 10, of the United States Constitution. Because the Commonwealth Court fully addressed this meritless claim, we need not examine it further. See 81 Pa. Commonwealth 530, ___, 475 A.2d 160, 163-164.

upon a difference having a fair and substantial relation to the object of the legislation." Snider v. Thornburgh, 496 Pa. at 168, 436 A.2d at 597. The burden rests upon the taxpayer to demonstrate that the classification is unreasonable, F. J. Busse Co. v. Pittsburgh, 443 Pa. 349, 279 A.2d 14 (1971), a burden which has been characterized as "heavy", Amidon v. Kane, 444 Pa. 38, 279 A.2d 53 (1971). A challenger must overcome the presumption of constitutionality afforded all acts of the General Assembly, 1 Pa. C.S. §1922(3), and legislation will not be declared unconstitutional unless it "clearly palpably, and plainly violates the constitution." Snider v. Thornburgh, 496 Pa. at 166, 436 A.2d at 598.

We begin by noting that while the Appellant asserts that the taxing scheme

permitted by the agreement is irrational, he does little to demonstrate the unreasonableness he perceives. The mere assertion that there is no justification for the distinction between wage earners and self-employed persons cannot be considered sufficient to meet the challenger's heavy burden of proof. Neither is it sufficient to present, as Appellant does, one or two examples of the different results accruing to different persons because of the legislative classification. Different results are the necessary product of statutory differentiation. It is only where the legislative scheme is based on distinctions irrelevant to the statutory purpose and affects related objects of the legislation differently that the scheme can be said to be irrational.

We need not search long and hard to

recognize a rational basis for the challenged legislation. A worker receiving compensation has little choice about where he earns his income. The business entity by which he is employed and from which he derives compensation determines the location where his skills and labor will be put to use. The interests in promoting interstate commerce and economic comity between separate sovereigns provide ample reason for the policy of treating interstate commuters as though their income was earned in the state of their residence rather than in the state of their employment. A person operating a business from which he derives net profits is not similarly situated. As the proprietor of the business he has the freedom to locate at a place of his own choice. The tax consequences of

earning profits in a state other than the state of his residence must be considered as factors entering into his business decision to so locate.

The ease of administration in collecting and reporting personal income tax withholding money adds to the rational basis for this statute. Without the interstate agreement each New Jersey resident receiving compensation in Pennsylvania would have tax money withheld from his pay at the Pennsylvania rate. He would then be required to annually file a Pennsylvania tax return in which he claimed non-residence and a full refund of money withheld. He would also be required to file a New Jersey tax return in which he reported his full income to New Jersey taxing authorities and pay the appropriate New Jersey tax. A similar

scenario would apply in the case of all Pennsylvania residents working in New Jersey. Under the statute, however, this entire process is simplified by allowing the employer to withhold not at the rate of the state where it is located, but at the rate of the employee's residence state. The employee is thus exempted from filing, and the authorities are relieved of the burden of processing returns for refunds in the employing-state and separate returns for payment in the residence-state.

By contrast, in the case of an individual earning net profits there is no withholding of either Pennsylvania or New Jersey tax. The responsibility for ensuring that the tax is collected (paid) lies not with an employer but with the taxpayer himself. The requi-

site forms for reporting the manner in which money was earned, the taxable status of that money, and appropriate credits, if any, for taxes paid on that money to another jurisdiction, will be the same regardless of the residence and business addresses of such a person. Rational decision-making does not mandate that by choosing to relieve the administrative burdens of a large number of taxpayers who are not in the first instance required to ensure collection of taxes, the Commonwealth must also reduce the administrative burdens encountered by a much smaller group who are primarily rseponsible for "collecting" and reporting their own taxes.

The Order of the Commonwealth Court is affirmed.

Mr. Justice Hutchinson joined in the

Majority Opinion and filed a Concurring Opinion.

Mr. Justice Larsen filed a Dissenting Opinion.

Mr. Justice Flaherty filed a Dissenting Opinion.

Mr. Justice Papadakos filed a Dissenting Opinion.

J U D G M E N T

ON CONSOLIDATION WHEREOF, it is now hereby ordered and adjudged by this Court that the Order of the Commonwealth Court is affirmed.

/s/Mildred E. Williamson

Deputy Prothonotary

DATED: April 14, 1986

SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

Mildred E. Williamson
Deputy Prothonotary

434 Main Capitol Building
P. O. Box 624
Harrisburg, Pennsylvania 17108
(717) 787-6181

April 28, 1986

Vernon C. Buckley
309 Georgian Drive
Cinnaminson, New Jersey 08077

Re: Commonwealth v. Vernon C. Buckley, Appellant
NO. 35 M. D. APPEAL DOCKET 1984
(J. 93-1985)

Dear Mr. Buckley:

Please substitute the enclosed last page (page 7) for the same previously sent to you and filed on April 14, 1986 for the Majority Opinion by Justice Zappala.

This substitution is necessary due to Mr. Justice Papadakos' April 24, 1986, withdrawal of his Dissenting Opinion.

Mr. Justice Papadakos now joins in Mr. Justice Larsen's Dissenting Opinion and Mr. Justice Flaherty's Dissenting Opinion.

Enclosed also, is revised Dissenting Opinions by Justice Larsen and Justice Flaherty,

Very truly yours,

/s/Mildred E. Williamson
Mildred E. Williamson,
Deputy Prothonotary

MEW/spb
cc: Robert Coyne, Esquire
Hon. James Gardner Colins
West Publishing Company

money was earned, the taxable status of that money, and appropriate credits, if any, for taxes paid on that money to another jurisdiction, will be the same regardless of the residence and business addresses of such a person. Rational decision-making does not mandate that by choosing to relieve the administrative burdens of a large number of taxpayers who are not in the first instance required to ensure collection of taxes, the Commonwealth must also reduce the administrative burdens encountered by a much smaller group who are primarily responsible for "collecting" and reporting their own taxes.

The Order of the Commonwealth Court is affirmed.

Mr. Justice Hutchinson joined in the Majority Opinion and filed a Concurring

Opinion.

Mr. Justice Larsen filed a Dissenting Opinion in which Mr. Justice Papadakos joined.

Mr. Justice Flaherty filed a Dissenting Opinion in which Mr. Justice Papadakos joined.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 35 M.D. Appeal Docket, 1984
Appellee,	:	Appeal from the Order of the
v.	:	Commonwealth Court at Docket No. 265 C.D. 1981.
VERNON C. BUCKLEY,	:	__ Pa. Commw. ___, 475 A.2d 160
Appellant	:	(1984).
	:	ARGUED: May 15, 1985

DISSENTING OPINION

MR. JUSTICE FLAHERTY FILED: APRIL 14, 1986

I dissent from the majority Opinion, not because I disagree with its statement of the applicable principles of law, but because I disagree with the majority's application of these principles to the facts of this case.

I agree, for example, that our

standard of review for cases in which a classification has been challenged on an equal protection basis is articulated in Snider v. Thornburgh, 496 Pa. 159, 436 A.2d 593 (1981), where this Court defined our inquiry as:

> whether [the classification] is reasonable, not arbitrary, and rests upon a difference having a fair and substantial relation to the object of the legislation.

496 Pa. at 166-168, 436 A.2d at 596-597.

I also agree that there is a presumption of constitutionality of a classification, and that the taxpayer bears the burden of demonstrating that the classification is unreasonable or that it is without fair and substantial relation to the object of the legislation.

I disagree, however, that the taxpayer in this case has not demonstrated the unreasonableness of the tax scheme. Dr. Buckley has established that New Jersey wage earners and self-employed persons who work in Pennsylvania are treated differently for Pennsylvania income tax purposes. He asserts that there is no valid reason for this difference in treatment and that there is no rational basis for the classification. Since there is no apparent significant tax difference between wage earners and self-employed persons, and because there is no apparent reason for classifying these persons differently, Dr. Buckley's assertion that there is no justification for the distinction between wage earners and self-employed persons should be treated as demonstrating prima facie unreasonableness. To do

otherwise would require Dr. Buckley to prove a negative: that no valid reason for the classification can exist. If that were required, his burden of demonstrating the unreasonableness of the governmental classification would become a virtual impossibility. See In re Appeal of Beaver Gasoline Company, 445 Pa. 571, 575, 285 A.2d 501,504 (1971).

I disagree, also, that the Commonwealth demonstrated that the classification is reasonable or that it has offered a reason for the treatment of the two types of taxpayers which has a fair and substantial relation to the object of the legislation. The majority suggests that the classification is justified by the fact that self-employed persons can locate where they wish, but

wage earners cannot, and that the ease of administration of tax returns is facilitated by the classification.

To begin with, it could as easily be argued that individuals may work for wages where they choose as that individuals may be self-employed where they choose. If it is true that a sheet metal worker must go where there is sheet metal work, it is also true that a doctor must go where there is a need for doctors. In the absence of evidence that doctors are as much needed in New Jersey as they are in Philadelphia, it is mere speculation on the majority's part that Dr. Buckley was as free to set up a practice in one state as the other.

Secondly, it should never be the case that classifications may be promulgated

by any governmental authority because of what the majority refers to as "ease of administration." By that standard, equal protection of the laws would cease to exist, for it would surely be the case that any governmental classification would serve to make some bureaucratic function easier.

Thus, the majority has failed to establish that the classification is reaonsable, for there is no significant difference between a person who pays taxes on wages and one who pays taxes on income from a business. The majority has also failed to establish that the classification rests upon a difference in the classes which has a fair and substantial relation to the object of the legislation. The only differences in the classes, according to the

majority, is that one class pays installments on its Pennsylvania tax liability which are withheld by its employers, and the other pays its tax liability at the end of the year and bears the responsibility of paying its own taxes. Absent the reciprocal agreement with New Jersey, members of both classes would file Pennsylvania tax forms at the end of the year. Regardless of what the object of the legislation is, therefore, the majority must needs fail to establish the second prong of the test articulated in Snider v. Thornburgh, supra, (that the classification rests upon a difference having an important relationship to the object of the legislation) for there is no essential difference between the classes.

The Commonwealth's case consists of a

number of responses to the unreasonableness claim, which may be summarized as follows: (1) the agreement between the states fosters comity; (2) it creates an orderly, convenient and simple method of reporting and collecting taxes; (3) both states reconcile W-2 forms; (4) the agreement alleviates the administrative burden on taxpayers living in one state and working in the other; (5) the agreement assists the states in enforcing withholding requirements against employers.

The flaw in these responses is that while the Commonwealth has given reasons for entering into the reciprocal agreement, not all of those reasons are relevant to the question of whether it is reaonsable to exclude some classes of income earners and include others in a

separate class subject to different tax burdens. Comity between the state (#1), orderly operations (#2), and easing the burdens on taxpayers (#4), for example, have nothing to do with whether there is a reasonable distinction between the classes of self-employed and non self-employed which explains their difference in treatment. Such concerns may have to do with whether it is desirable for the Commonwealth to have a reciprocal income tax agreement with New Jersey, but they have nothing to do with whether there are differences between the groups of taxpayers which justify the difference in tax treatment.

The only reasons offered which might be relevant to the issue of whether the classification is reasonable and whether differences in the classes are signifi-

cantly related to the object of the legislation are (#3), the reconciling of W-2 forms, and (#5) the enforcement of W-2 reporting requirements against employers.

Even reasons (#3) and (#5) are not, however, self-evidently valid justifications of differential treatment. The argument that employees and employers utilize W-2 forms which can be reconciled and which can be used to enforce reporting requirements is, without more, not an argument at all, but merely a description of the fact that W-2 forms are utilized for one group of persons and not for another. Without explanation, we have no idea of the significance of the fact that one group of taxpayers files W-2 forms and the other does not: this fact may be of

extreme importance, of some importance, or of no importance at all for Commonwealth enforcement efforts. We are not told how reconciliation works or how W-2 forms enhance enforcement or reporting requirements.

In essence, the Commonwealth has described one feature which distinguishes the two classes, but it has not explained why this distinguishing feature justifies different treatment. Thus, since the Commonwealth has failed to rebut the prima facie unreasonableness of the classification, and since even the majority has failed to offer reasons which justify the different tax treat- ment of individual taxpayers, the classification should not withstand constitutional challenge.

For these reasons, I would hold that the Reciprocal Personal Income Tax agreement between the Commonwealth of Pennsylvania and the State of New Jersey is constitutionally infirm in that it contains a classification which violates both the Fourteenth Amendment of the United States Constitution and the Uniformity Clause of the Pennsylvania Constitution.*

Mr. Justice Papadakos joins in this Dissenting Opinion.

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*I would not hold that any provision of the Tax Reform Code of 1971 is unconstitutional. To the contrary, Section 7356 (b) of the Code, which authorizes reciprocal personal income tax agreements, also contains broad language authorizing "all other matters relating to cooperation between the states." I would conclude, therefore, that even though Section 7356 specifically authorizes the exemption of compensation from Pennsylvania income tax, its terms are broad enough to include, as well, an exemption for net profits.

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	: No. 35 M.D. Appeal Docket, 1984
Appellee,	: Appeal from the Order of the
v.	: Commonwealth Court at Docket No. 265 C.D. 1981.
VERNON C. BUCKLEY,	: 81 Pa. Commw. 530, 475 A.2d 160
Appellant	: (1984).
	: ARGUED: May 15, 1985

DISSENTING OPINION

JUSTICE ROLF LARSEN FILED: APRIL 14, 1986

I join in Mr. Justice Flaherty's dissenting opinion which would hold unconstitutional the Reciprocal Personal Income Tax agreement between Pensylvania and New Jersey, except that I would have provided a six month stay of judgment to afford the appropriate governmental bodies an opportunity to correct the

constitutional infirmity, i.e., to eliminate the disparate treatment of similarly situated taxpayers. See Northern Pipeline Co. v. Marathon Pipe Line Co., 458 U.S. 50, 88 (1982) (although broad grant of jurisdiction to bankruptcy court judges was unconstitutional, decision was to apply prospectively only with judgment stayed for limited period to "afford congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws.")

Mr. Justice Papadakos joins in this Dissenting Opinion.

IN THE COMMONWEALTH COURT OF

PENNSYLVANIA

VERNON C. BUCKLEY, Petitioner	:	
v.	:	No. 265 C. D. 1981
COMMONWEALTH OF PENNSYLVANIA, Respondent	:	

BEFORE: HONORABLE ROBERT W. WILLIAMS, JR., Judge
HONORABLE FRANCIS A. BARRY, Judge
HONORABLE JAMES GARDNER COLINS, Judge

ARGUED: February 1, 1984

O P I N I O N

OPINION BY JUDGE COLINS

FILED: April 13, 1984

Vernon Buckley has filed a Petition for Review of an Order of the Board of Finance and Revenue, sustaining an assessment by the Department of Revenue of Seven Hundred Forty-Three Dollars and Fifty-Eight Cents ($743.58), for the unpaid tax, plus interest, and a five percent (5%) underpayment penalty for the 1978 taxable year.

The parties have filed a Stipulation of Facts from which we have culled the following as our findings:

(1) Vernon C. Buckley (Taxpayer) has been a resident of New Jersey since 1959. During the year at issue, the taxpayer resided at 309 Georgian Drive,

Cinnaminson, New Jersey.

(2) Taxpayer is a self-employed osteopathic physician and surgeon with offices at 4256 Castor Avenue, Philadelphia, Pennsylvania.

(3) Taxpayer has timely filed and paid the Pennsylvania personal income tax every year from the inception of the Tax Reform Code of 1971, until the implementation of the "Reciprocal Personal Tax Agreement" (Agreement), executed between the Commonwealth of Pennsylvania and the State of New Jersey.

(4) Taxpayer had a net profit of Thirty-three Thousand, Seven Hundred Ninety-Eight Dollars and Ninety-One Cents ($33,798.91), in connection with the practice of his profession in the City of Philadelphia, Pennsylvania. However, taxpayer feels that he is no

longer required to pay Pennsylvania personal income tax because of the signing of the Agreement.

(5) On April 17, 1978 taxpayer sent a State of Non-Residence in Pennsylvania to the Pennsylvania Department of Revenue, Personal Income Tax Bureau, Harrisburg, Pennsylvania 19129.

(6) On May 8, 1978 taxpayer received a reply from the Pennsylvania Department of Revenue which stated that he must file a Pennsylvania Personal Income Tax Return.

(7) For the year in question, the taxpayer filed a Pennsylvania Personal Income Tax Return, but did not pay the tax stating that since he was a New Jersey resident, he was exempt from the tax.

(8) The Department of Revenue issued an assessment against taxpayer.

(9) Thereafter, the taxpayer filed a Petition for Review to the Board of Appeals. That Board, by Decision and Order dated August 12, 1980, denied taxpayer relief.

(10) Taxpayer filed a Petition for Review with the Board of Finance and Revenue.

(11) That Board, by Order dated January 13, 1981 refused relief to the taxpayer and sustained the action taken by the Department of Revenue.

(12) Pursuant to Section 356(a) of the Tax Reform Code of 1971, the Commonwealth of Pennsylvania and the State of New Jersey entered into a "Reciprocal Personal Income Tax Agreement" which became effective for taxable years beginning after December 31, 1977.

Section 356(b)[1], which is based upon Article VIII, Section 3 of the

Pennsylvania Constitution[2], provides that:

> (b) The department may enter into an agreement with the taxing authorities of any state which imposes a tax on or measured by income to provide that compensation paid in such state to residents of this Commonwealth shall be exempt from such tax; in such case any compensation paid in this state to residents of such state shall be exempt from Pennsylvania personal income tax. The department, in such agreements, may provide for reciprocal withholding, employer liability, exchange of information and all other matters relating to cooperation between the states.[3]

The taxpayer first argues that he is

exempt from the Pennsylvania personal income tax.

In our opinion, the facts do not support this contention.

Section 356(b) only authorizes the reciprocal exempting from tax for income received in the form of compensation. The term compensation is defined as:[4]

> [a]ll salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips, and similar remuneration for services rendered whether directly or through an agent and whether in cash or in property except income derived from the United States Government for active duty outside the Commonwealth of Pennsylvania as a member of its armed forces.

The taxpayer, in the instant case, is not an employee who receives a salary or wage,[5] but is a self-employed physician who received profits from an unincorporated business. His income, therefore, clearly falls within the definition of net profits.[6]

Since the Tax Reform Code of 1971 imposes a tax on all income which is in the form of net profits, the taxpayer must pay the owing tax.[7] The Reciprocal Agreement[8] between Pennsylvania and New Jersey[9] did not intend to exempt net profits from being taxed. Pennsylvania may constitutionally impose a tax on non-residents' income which is earned within the State. See Shaffer v. Carter, 252 U.S. 37 (1920).

The taxpayer next argues that his constitutional rights to the equal protection of the law have been

violated.

This argument is equally without merit. The instant case does not present a situation where a taxpayer in one class is treated in a manner different from a taxapyer in the same class.[10] Here, all non-resident taxpayers who do not receive income in the form of compensation are treated uniformly.[11]

"It is true that the challengers of the constitutionality of state or local taxation bear a heavy burden in their efforts to overturn such legislation." Amidon v. Kane, 444 Pa. 38, 51, 279 A.2d 53, 60 (1971).

In Dole v. Philadelphia, 337 Pa. 375, 11 A.2d 163 91940), our Supreme Court stated that:

> [A classification] may properly be made according to reasonable, just and practical rules, drawn

from experience, and must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed. "If the selection is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law. ..."

All that our Constitution requires is that taxes shall be uniform upon the same class of subjects. Therefore, if the classification above referred to is sound, the tax imposed by the ordinance before us is uniform if it falls equally upon all members within each class.

Id. at 381, 11 A.2d at 166 (citations omitted).

The exemption solely for income in the form of compensation is reasonable, and is not capricious nor arbitrary. The purpose of the statute was to foster comity and cooperation in the creation of an orderly, convenient and uncomplicated method of collecting and reporting personal income tax withholding monies. Also, as discussed previously, it is uniform upon the same class of subjects.

Lastly, the taxpayer contends that because Pennsylvania and New Jersey did not obtain the consent of Congress, the Reciprocal Agreement violates the Compact Clause, Article I, Section 10 of the United States Constitution.[12]

In U.S. Steel Corp. v. Multi-State Tax Commission, 434 U.S. 452 (1978), twenty-one (21) states[13] entered into a

Multistate Tax Compact without obtaining congressional approval. The United States Supreme Court held that no violation of the Compact Clause had occurred. The Court stated that: "[r]ead literally, the Compact Clause would require the states to obtain congressional approval before entering into any agreement among themselves, irrespective of form, subject, duration, or interest to the Unted States." Id. at 459.

> The terms "agreement" or "compact" taken by themselves are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no objection or have any interest in interfering with, as well as to those which may tend to increase and build up the

> political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control.

U.S. Steel Corp., 434 U.S. at 467.

The Court held that "[o]n its face, the Multi-state Tax Compact contains no provisions that would enhance the political power of the member states in a way that encroaches upon the supremacy of the United States." Id. at 472. Also, the Court found that "[t]his pact does not purport to authorize the member states to exercise any powers they could not exercise in its absence." U.S. Steel Corp., 434 U.S. at 472.

The Reciprocal Agreement, in the case

at bar, does not tend to increase and build up the political influence of the states' power at the expense of the federal government. Nor does it permit either state to exercise any powers they could not exercise in its absence, but merely facilitates comity and cooperation between the states. See Bode v. Barrett, 344 U.S. 583 (1953).[14]

Accordingly, the Order of the Board of Finance and Revenue is affirmed. Judgment is entered against the taxpayer for taxes due, plus appropriate interest and costs.

/s/James Gardner Colins, Judge
JAMES GARDNER COLINS, Judge

FOOTNOTES

[1]Section 356(b) of the Tax Reform Code of 1971, Act of March 4, 1971, P.L. 6, as amended, 72 P.S. §7356(b).

[2]PA. CONST. art. VIII, §3, entitled reciprocal exemptions states that "[t]axation laws may grant exemptions or rebates to residents, or estates of residents, of other states which grant similar exemptions or rebates to residents or estates of residents, of Pennsylvania".

[3]The Commonwealth of Pennsylvania and the State of New Jersey, pursuant to Section 356(a) of the Tax Reform Code of 1971, Act of March 4, 1971, P.L. 6, as amended, 72 P.S. §7356(a) and Section 54:9-17(e) of the New Jersey Gross Income Tax Act, N.J. STAT. ANN. §54:9-17(e) (West 1983), entered into a Reciprocal Personal Income Tax Agreement (Agreement).

New Jersey and Pennsylvania have entered into an agreement to facilitate the collection of revenues and to have a convenient and efficient method of reporting compensation subject to withholding. The purpose of reciprocity provisions is to avoid the taxation of a person's income by more than one side. Clement v. Stone, 195 Miss. 770, 13 So.2d 517 (1943).

[4]72 P.S. §7301(a)(1).

[5]The taxpayer did not file a W-2 Form.

[6]72 P.S. §7303(a)(1) defines net profits as:

"The net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis, in accordance with accepted accounting principles and practices but without deduction of taxes based on income."

[7]Section 1928(b)(5) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1928(b)(5) provides that provisions exempting persons and property from taxation shall be strictly construed. If we strictly construe the exemption here, the taxpayer does not fall within it.

> [8]Nothing in this agreement shall be interpreted to exempt a resident in Pennsylvania or New Jersey who has taxable income in the Commonwealth or State of non-residence other than in the form of compensation from liability for payment of income or filing an income tax return with regard to such other taxable income.

There is no evidence on the record that the taxpayer paid any tax on net profits income in New Jersey. Clearly, it was not the intent of the taxing authorities that a taxpayer be totally exempt from any tax on this income.

[9]Supra, note 3.

An employer, upon receiving a properly filled out certificate of non-residence from his employee, can withhold income tax at the rate established by the state of residency and remit these monies directly to the state of residence. The non-resident employee, who had only compensation income, would therefore not have to file a non-resident tax return with the withholding state and then file a resident tax return to take a credit for the taxes paid to the state of non-residence.

However, New Jersey residents who derive compensation in Philadelphia are still subject to the Philadelphia Wage Tax. The Pennsylvania employer may apply this tax against the New Jersey Gross Income Taxes which would otherwise be required to be withheld.

With respect to income taxes within Pennsylvania, and not subject to any exemption, a taxpayer is entitled to a credit on his New Jersey personal income tax return for the income taxes paid to Pennsylvania. N.J. Stat. Ann. §54:4-1 (West 1983).

[10]PA. CONST. art. VIII, §1, provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax ...."

[11]Conversely, if a resident of Pennsylvania were engaged in the practice of medicine in New Jersey, as an unincorporated business, the taxing authority

would impose a personal income tax on the net profits received in New Jersey. N.J. STAT. ANN. §§54 A:2-1, 54 A:501(b), 54 A:5-8 (West 1983).

[12]U.S. CONST. art. I, §10, provides that "[n]o state shall without the consent of Congress ... enter into any Agreement or Compact with another state ...."

[13]By the inception of this litigation, 21 states had entered into this Tax Compact; however, after the suit began, four states withdrew from the Compact.

[14]In Bode, the Court held that a reciprocal arrangement which exempted the residents of one state from payment of a license tax imposed by the other state, did not violate the Compact Clause.

IN THE COMMONWEALTH COURT OF

PENNSYLVANIA

VERNON C. BUCKLEY, Petitioner	:	
v.	:	No. 265 C. D. 1981
COMMONWEALTH OF PENNSYLVANIA, Respondent	:	

O R D E R

NOW, April 13, 1984, the Order of the Board of Finance and Revenue at No. RPIT-2589, dated January 16, 1981, is affirmed. Judgment is entered against the taxpayer for taxes due, plus appropriate interest and costs.

/s/James Gardner Colins, Judge

JAMES GARDNER COLINS, JUDGE

CERTIFIED FROM THE RECORD
April 13, 1984
Frances C. Barbush, Chief Clerk

In the Supreme Court of the
State of Pennsylvania

Vernon C. Buckley,
Appellant

v.

Commonwealth of Pennsylvania,
Appellee

No. 35 M. D. Appeal
Docket, 1984

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Vernon C. Buckley, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Pennsylvania, affirming the dismissal of the complaint, entered in this action on April 14, 1986.

This appeal is taken pursuant to 28 U.S.C. 1257(2).

Vernon C. Buckley
Vernon C. Buckley,
Appellant

Proof of Service

I hereby certify that I am this day serving the foregoing Jurisdictional Statement upon the persons and in the manner indicated below, which service satisfies the requirement of Rule "33", Procedure on Appeals of the United States Supreme Court.

Service by First Class
Mail Addressed As Follows:

Robert P. Coyne
Deputy Attorney General
Counsel for the Commonwealth of
Pennsylvania
15 Floor, Strawberry Square
Harrisburg, Penna. 17120

Mildred E. Williamson
Deputy Prothonotary
Supreme Court of Pennsylvania
434 Capitol Building, P. O. Box 624
Harrisburg, Pennsylvania 17108

Dated: June 25, 1986

Vernon C. Buckley

Vernon C. Buckley
309 Georgian Drive,
Cinnaminson, New Jersey
08077

A - 53

RECIPROCAL PERSONAL INCOME TAX AGREEMENT

BETWEEN

COMMONWEALTH OF PENNSYLVANIA

AND

STATE OF NEW JERSEY

WHEREAS, the Commonwealth of Pennsylvania and the State of New Jersey have previously entered into a Reciprocal Personal Income Tax Agreement by date of December 20, 1976, and are now desirous of amending said agreement prior to the effective date of December 31, 1977, NOW THEREFORE the parties mutually agree as follows:

I. Statement of purpose.

It is the intention of this agreement and the parties hereto:

A. To relieve employers and employees in the Commonwealth of Pennsylvania and the State of New Jersey from the withholding of New Jersey Personal Income Tax on compensation paid in New Jersey to residents of Pennsylvania and from the withholding of Pennsylvania Personal Income Tax on compensation paid in Pennsylvania to residents of New Jersey;

B. To relieve Pennsylvania residents from liability for New Jersey Personal Income Tax and the requirement for filing New Jersey tax returns with

regard to compensation paid in New Jersey;

C. To relieve New Jesey residents from liability for Pennsylvania Personal Income Tax and the requirement for filing Pennsylvania tax returns with regard to compensation paid in Pennsylvania;

D. To establish procedures to assist each party in the enforcement of the withholding provisions of the income tax laws of its Commonwealth or State against employers in the other party's Commonwealth or State.

E. To establish procedures for the interchange of Commonwealth or State tax information between the parties in order to assist each party in the compliance, administration, and enforcement of their respective income tax laws.

F. To provide for audits of Pennsylvania-based employers withholding New Jersey Personal Income Tax from the wages of its employees and New Jersey-based employers withholding Pennsylvania Personal Income Tax from the wages of its employees.

II. Agreements.

In furtherance of their above stated intention and purposes, the parties agree as follows:

A. Agreements respecting withholding.

1. Every Pennsylvania employer shall,

to the extent provided by the New Jersey Income Tax Act, be liable to the State of New Jersey for the withholding of New Jersey Personal Income Tax from compensation paid to residents of New Jersey.

2. Every New Jersey employer shall, to the extent provided by the Pennsylvania Income Tax Act, be liable to the Commonwealth of Pennsylvania for the withholding of Pennsylvnia Personal income Tax from compensation paid to residents of Pennsylvania.

3. No Pennsylvania employer shall be required to withhold Pennsylvania income tax from compensation paid in Pennsylvania to a resident of New Jersey who files with his employer a certificate of nonresidence unless and until such employer is advised that any such certificate was improperly filed.

4. No New Jesey employer shall be required to withhold New Jersey Personal Income Tax from compensation paid in New Jersey to a resident of Pennsylvania who files with his employer a certificate of nonresidence unless and until such employer is advised that any such certificate was improperly filed.

5. Pennsylvania will encourage Pennsylvania employers to withhold and remit New Jersey Personal Income Tax for residents of New Jersey employed in Pennsylvania.

6. New Jersey will encourage New Jersey employers to withhold and remit Pennsyl-

vania Personal Income Tax for residents of Pennsylvania employed in New Jersey.

7. For purposes of this agreement "compensation paid in New Jersey" is as defined in Section 54A: 5-1(a) of the New Jersey Income Tax Act.

8. For purposes of this agreement, "compensation paid in Pennsylvania" is as defined in Section 301(d) of the Pennsylvania Income Tax Act.

9. For purposes of this agreement, the term "Pennsylvania employer" means an employer who is subject to the jurisdiction of the Commonwealth of Pennsylvania, and the term "New Jersey employer" means an employer who is subject to the jurisdiction of the State of New Jersey.

B. Agreements respecting liability for Personal Income Tax and tax return filing.

1. No Pennsylvania resident who signs a nonresident certificate shall be required to pay New Jersey Personal Income Tax or to file a New Jersey Personal Income Tax return on compensation paid in New Jersey.

2. No New Jersey resident who signs a nonresident certificate shall be required to pay Pennsylvania Personal Income Tax or to file a Pennsylvania Personal Income Tax return on compensation paid in Pennsylvania.

3. For purposes of this agreement, the

term "Pennsylvania resident as defined in the Pennsylvania Personal Income Tax Act, and the term "New Jersey resident" means an individual who is a resident as defined in the New Jersey Personal Income Tax Act.

4. Nothing in this agreement shall be interpreted to exempt a resident of Pennsylvania or New Jersey who was a part-year resident of the other Commonwealth or State from liability for payment of Personal Income Tax or filing a Personal Income Tax return with regard to compensation received while a resident of the other Commonwealth or State.

5. Nothing in this agreement shall be interpreted to exempt a resident of Pennsylvnia or New Jersey who has taxable income in the Commonwealth or State of nonresidence other than in the form of compensation from liability for payment of Personal Income Tax or filing a Personal Income Tax return with regard to such other taxable income.

III. Agreements respecting exchange of information.

Each of the parties hereto agrees to furnish the other with the following information at such time or times and in such manner as may be agreed upon between them:

1. The name, address and federal taxpayer identification number of each individual filing a Personal Income Tax or information return in such party's Commonwealth or State which shows an

address for such individual in the other party's Commonwealth or State.

2. The amount of income tax shown as due on each return referred to in paragraph 1 of this section.

3. The amount and nature of any adjustments made in any item affecting the tax liability of the individual in such party's Commonwealth or State.

4. Copies of certificats of non-residency filed by each individual claiming residency in the other party's Commonwealth or State.

5. The information to be exchanged shall be the most recent information available. The parties shall exchange supplemental information as it becomes available.

6. Such other information as the parties hereto may from time to time agree upon and as shall be set forth in writing and appended hereto.

IV. Income tax audit program.

A. The Commonwealth of Pennsylvania agrees:

1. To perform a minimum of twenty five (25) audits per year of Pennsylvania-based employers withholding New Jersey Personal Income Tax.

2. In addition to the aforementioned audits, to perform special audits, where feasible, of Pennsylvania-based employ-

ers withholding New Jersey Personal Income Tax where New Jersey details the reasons for the pressing need for same.

3. Where Personal Income Tax audits of Pennsylvania-based employers reveals failure to withhold or remit withheld tax to the State of New Jersey, to disclose to the State of New Jersey the names, federal taxpayer identification numbers and addresses of such employers and New Jersey residents.

B. The State of New Jersey agrees:

1. To perform a minimum of twenty five (25) audits per year of New Jersey-based employers withholding Pennsylvania Personal Income Tax.

2. In addition to the aforementioned audits, to perform special audits, where feasible, of New Jersey-based employers withholding Pennsylvania Personal Income Tax where Pennsylania details the reasons for the pressing need for same.

3. Where Personal Income Tax Audits of New Jersey-based employers reveals failure to withhold or remit withheld tax to the Commonwealth of Pennsylvania, to disclose to the Commonwealth of Pennsylvania the names, federal taxpayer identification numbers and addresses of such employers and Pennsylvania residents.

V. Other matters.

A. If for any reason either party is unable to comply with any one or more of

the terms of this agreement, the parties shall mutually agree on the extent to which this agreement shall continue in effect or, in the absence of such mutual agreement, this agreement shall terminate in accordance with the provisions of paragraph VI in its entirety without prejudice, however, to any action previously taken hereunder.

B. Each of the parties signatory hereto hereby states and represents that he is authorized to enter into this agreement and to furnish the information and assistance contemplated hereby, and that the fulfillment of his obligations hereunder will not violate any provision of his Commonwealth's or State's constitution or laws, including, without limitation, provisions respecting confidentiality of Commonwealth or State information.

C. This reciprocity agreement shall terminate sixty (60) days following enactment of any further legislation respecting taxation of compensation of Pennsylvania residents whether by amendment to the Transportation Benefits Tax Act or otherwise including but not limited to the passage of any personal income tax by the State of New Jersey or local governmental units of a tax based upon individual earnings, income, net profits, or gains unless the Commonwealth of Pennsylvania shall waive in writing such termination of this agreement.

D. This reciprocity agreement shall terminate sixty (60) days following

enactment of any further legislation respecting taxation of New Jersey residents whether by amendment to the Pennsylvania Personal Income Tax or otherwise including but not limited to the passage of any personal income tax by the Commonwealth of Pennsylvania or local governmental units of a tax based upon individual earnings, income, net profits, or gains unless the State of New Jersey shall waive in writing such termination of this agreement.

E. The provisions of this agreement are intended to provide for a cooperative relationship with regard to other related matters. The duties hereunder are of a continuing nature and any new or different information, of the types herein described, will be deemed to come within the purview of this agreement.

F. The provisions of this agreement do not encompass the Wage Tax or Net Profit Tax imposed and collected by the City of Philadelphia and said taxes are specifically excluded from the scope of this agreement.

G. The Commonwealth of Pennsylvania does not waive any of its legal rights or those of its residents concerning the validity of the Transportation Benefits Tax and refund of tax paid in accordance with the provisions of the enactment. The Commonwealth also reserves the right to institute and prosecute such litigation as it deems appropriate regarding the validity of the Transportation Benefits Tax.

VI. Effective Date - Termination

This agreement is made as of this _____ day of _____ 197____ and shall become effective and operative upon the parties with respect to taxable years beginning after December 31, 1977. This agreement supercedes the Reciprocal Personal Income Tax Agreement dated December 20, 1976. This agreement may be terminated as of the beginning of a calendar year by either party signatory hereto upon one-hundred twenty days written notice to the other party.

_____

Sidney Glaser, Director
Division of Taxation
Department of the Treasury
State of New Jersey

_____

Milt Lopus
Secretary of Revenue
Commonwealth of Pennsylvania